86-529

No. ———

Supreme Court, U.S.
FILED
OCT 6 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

TRINIDAD CORPORATION,
Petitioner,

v.

DISTRICT NO. 1—PACIFIC COAST DISTRICT,
MARINE ENGINEERS' BENEFICIAL ASSOCIATION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, SUPREME COURT OF THE STATE OF NEW YORK, FIRST JUDICIAL DEPARTMENT

PETER CHATILOVICZ
RONALD A. LINDSAY
Counsel of Record
ALISA M. AUSTIN
SEYFARTH, SHAW, FAIRWEATHER & GERALDSON
Fifth Floor
1111 19th Street, N.W.
Washington, D.C. 20036
(202) 463-2400
Attorneys for Petitioner

DATED: October 6, 1986

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

4318

QUESTION PRESENTED FOR REVIEW

Whether a labor arbitration award rendered pursuant to a collective bargaining agreement between an employer and a union is unenforceable under Section 301 of the Labor Management Relations Act when the award by its own terms applies to two employers and a union which did not participate in the arbitration proceeding and were not signatories to the collective bargaining agreement.

PARTIES

The parties to the proceedings in the Appellate Division, Supreme Court of the State of New York, First Judicial Department, were Trinidad Corporation and District No. 1—Pacific Coast District, Marine Engineers' Beneficial Association.*

---

* In accordance with Rule 28.1 of the Rules of this Court, please note that Trinidad Corporation is a wholly-owned subsidiary of Apex Shipping, Inc., which is a wholly-owned subsidiary of Apex Holding Co. Apex Holding Co. is, in turn, a wholly-owned subsidiary of Apex Oil Co.

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
STATUTES INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	8
THIS COURT SHOULD RESOLVE THE CONFLICT AMONG THE FEDERAL COURTS OF APPEALS REGARDING THE APPROPRIATENESS OF MULTIPARTITE ARBITRATION	8
A. The Decision Of This Court In *Union Pacific Railroad* Supports Multipartite Arbitration	9
B. The Federal Courts Are In Conflict As To The Appropriateness of Multipartite Arbitration	11
CONCLUSION	15
APPENDIX A	1a
APPENDIX B	3a
APPENDIX C	7a
APPENDIX D	9a
APPENDIX E	10a
APPENDIX F	17a

TABLE OF AUTHORITIES

Cases: Page

Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 105 S. Ct. 1904 (1985) 14
Baltimore Typographical Union No. 12 v. A.S. Abell Co., 441 F. Supp. 596 (D. Md. 1977), *aff'd mem.*, 588 F.2d 1347 (4th Cir. 1979) 12
Bell Aerospace Co. v. Local 516, UAW, 500 F.2d 921 (2d Cir. 1974) 12
CBS v. American Recording and Broadcasting Ass'n, 414 F.2d 1326 (2d Cir. 1969), *aff'g*, 293 F. Supp. 1400 (S.D.N.Y. 1968) 11
Carey v. Westinghouse Electric Corp., 375 U.S. 261 (1964) 9, 10, 11, 15
District No. 1—Pacific Coast District, Marine Engineers' Beneficial Ass'n v. Trinidad Corp., 583 F. Supp. 262 (S.D.N.Y. 1984) 3, 13
District No. 1—Pacific Coast District, Marine Engineers' Beneficial Ass'n (Crest Tankers, Inc.), NLRB Case No. 14-CB-6124 (Sept. 24, 1986) 8
In re District No. 1—Pacific Coast District, Marine Engineers' Beneficial Ass'n, 723 F.2d 70 (D.C. Cir. 1983) 5, 13
Laborers' International Union v. W.W. Bennett Construction Co., 686 F.2d 1267 (7th Cir. 1982) 12
Local 850, International Ass'n of Machinists v. T.I.M.E.-DC Inc., 705 F.2d 1275 (10th Cir. 1983) 12
Local 189, Service Employees Union v. Scot Lad Foods, Inc., 513 F. Supp. 839 (N.D. Ill. 1981) 13
Local 416 Sheet Metal Workers International Ass'n v. Helgesteel Corp., 507 F.2d 1053 (7th Cir. 1974) 12
Local 201, United Association of Journeymen v. Shaker, Travis & Quinn, Inc., 555 F. Supp. 314 (S.D.N.Y.), *vacated on other grounds*, 709 F.2d 178 (2d Cir. 1983) 12
Local No. 552, United Brick and Clay Workers v. Hydraulic Press Brick Co., 371 F. Supp. 818 (E.D. Mo. 1974) 12

TABLE OF AUTHORITIES—Continued

	Page
Nashua Typographical Union v. Telegraph Publishing Co., 365 F. Supp. 262 (D.N.H. 1973)	13
Transportation-Communication Employees Union v. Union Pacific Railroad, 385 U.S. 157 (1966)	9, 10, 11, 15
United Steel Workers v. Crane Co., 456 F. Supp. 385 (W.D. Pa. 1978)	12
Window Glass Cutters League v. American St. Gobain Corp., 428 F.2d 353 (3d Cir. 1970)	12
Statutes:	
28 U.S.C. § 1257(3)	2
29 U.S.C. § 151 *et seq.*	*passim*
29 U.S.C. § 185	*passim*
45 U.S.C. § 151 *et seq.*	9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

No. ———

TRINIDAD CORPORATION,
Petitioner,

v.

DISTRICT NO. 1—PACIFIC COAST DISTRICT,
MARINE ENGINEERS' BENEFICIAL ASSOCIATION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, SUPREME COURT OF THE STATE OF NEW YORK, FIRST JUDICIAL DEPARTMENT

Petitioner, Trinidad Corporation (hereinafter "Trinidad"), an employer subject to the provisions of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 151 *et seq.*, and Section 301 of the Labor Management Relations Act of 1947 ("LMRA"), 29 U.S.C. § 185, respectfully prays that a writ of certiorari issue to review a judgment of the Appellate Division, Supreme Court of the State of New York, First Judicial Department.

OPINIONS BELOW

The January 21, 1986 order of the Appellate Division, Supreme Court of New York, First Judicial Department, which affirmed the judgment of the Supreme Court of

New York, County of New York, Special Term, is unreported and is reproduced herein as Appendix A. Reproduced in Appendix B is the unreported November 14, 1984 opinion of the Supreme Court of New York, County of New York, Special Term, which directed that judgment be entered against Trinidad; reproduced in Appendix C is the judgment of the Supreme Court of New York, County of New York, Special Term, which was entered on November 23, 1984. Reproduced in Appendix D is the unreported July 8, 1986 order of the Court of Appeals of the State of New York, which denied Trinidad's motion for leave to appeal to that court.

JURISDICTION

The judgment of the Appellate Division, Supreme Court of New York, First Judicial Department, was entered on January 21, 1986. Thereafter, on July 8, 1986, the Court of Appeals of the State of the New York denied Trinidad's motion for leave to appeal. This petition for a writ of certiorari has been filed within ninety days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

STATUTES INVOLVED

The statutes involved in this case are Section 301(a) of the LMRA, 29 U.S.C. § 185(a), and the NLRA, 29 U.S.C. § 151 *et seq.*, especially Section 8(b) of the NLRA, 29 U.S.C. § 158(b). These provisions are reproduced in Appendix F.

STATEMENT OF THE CASE

In this proceeding, District No. 1—Pacific Coast District, Marine Engineers' Beneficial Association ("MEBA"), has brought suit under Section 301(a) of the LMRA to enforce an arbitration award which arose out of a collective bargaining agreement between Trinidad and MEBA. The award is inconsistent with federal labor law because it attempts to bind two other, non-

signatory, employers and an entirely independent union. Indeed, the award at issue ordered that the agreement be applied to the nonsignatory employers, thereby displacing an existing labor contract and depriving the workers of these nonsignatories of the right to be represented by their chosen union. The defectiveness of the award is further demonstrated by the fact that the General Counsel of the National Labor Relations Board ("NLRB" or "Board") has issued a complaint charging that MEBA has violated the NLRA by attempting to enforce the award (App. E).

Trinidad, a Delaware corporation, is engaged in the ownership and operation of U.S. flag ocean-going tanker vessels.[1] In 1981, Trinidad was acquired by Apex Shipping, Inc., a Missouri corporation. Apex Shipping, Inc. is owned by the Apex Holding Company, also a Missouri corporation.

MEBA is a labor organization representing licensed marine engineers (App. E at 12a, 13a). Prior to June 1984, it represented the licensed marine engineers of Trinidad.

On June 16, 1981, Trinidad and MEBA entered into a labor agreement which covered the terms and conditions of employment of the licensed marine engineers employed on Trinidad's vessels. On October 11, 1983, MEBA demanded that Trinidad participate on October 19, 1983 in the arbitration of a grievance arising out of an alleged violation of the agreement. The arbitration was to be held before W. J. Usery, Jr., the arbitrator designated

---

[1] The factual summary presented in this petition is taken from the affidavits submitted by Trinidad at various times while the case was being processed in the New York state courts. No testimony was ever taken in this case, with the exception of testimony offered by MEBA during the *ex parte* arbitration hearing. *See infra*, p. 6. A federal district court opinion which makes findings of fact relevant to the instant case is *District No. 1—Pacific Coast District, Marine Engineers' Beneficial Ass'n v. Trinidad Corp.*, 583 F. Supp. 262 (S.D.N.Y. 1984).

pursuant to the agreement. MEBA's grievance alleged that Trinidad breached the agreement by failing to have the agreement applied to two other employers, Crest Tankers, Inc. ("Crest") and Clayton Tankers, Inc. ("Clayton").[2] MEBA's grievance further asserted that MEBA was entitled to have its members perform the work of Crest's licensed marine engineers.[3]

Crest, which was incorporated in Missouri in September 1982, is engaged in the ownership and operation of U.S. flag vessels. Crest is owned by Apex Holding Company. On October 29, 1982, Crest entered into a collective bargaining agreement with the Crest Tankers Officers' Association ("CTOA").[4] This agreement covers Crest's licensed personnel, including its licensed marine engineers.

---

[2] Specifically, MEBA alleged that Trinidad violated the "subsidiaries and affiliates" clauses of the agreement, which provide:

> SECTION 36. COVERAGE OF AGREEMENT
>
> (a) This Agreement covers all licensed marine engineers employed on U.S. flag ocean-going tanker vessels, of whatever type, owned or operated (both at the present or at any time during the life of this agreement) by the Company or its subsidiary or affiliate, or by an entity for which the Company acts as a bargaining agent, and whether operated as an agent or under a bareboat charter, including vessels owned by the company or its subsidiary or affiliate and operated by another entity, but not including a vessel operated on a time charter basis . . . .
>
> (b) The term "subsidiary" or "affiliate" shall be deemed to include any business entity whether corporate, partnership, trust or individual which is effectively controlled by or effectively controls the Company either directly or indirectly.

[3] Clayton, which was incorporated in Missouri in January 1983, owns, but does not itself operate, U.S. flag vessels. As a consequence, Clayton has no shipboard employees.

[4] CTOA is a labor organization within the meaning of the NLRA and the LMRA (App. E at 12a), and operates an office in Palisades, New York.

In its October 11, 1983 notice of arbitration, MEBA invited Crest and Clayton to participate in the arbitration hearing. These parties declined to do so.[5] On October 19, 1983, Trinidad made a special appearance before the arbitrator to contest the arbitrability of the grievance and to seek a continuance of the hearing. After three hours of argument, Arbitrator Usery grudgingly granted a continuance until November 9, 1983.

On November 1, 1983, Trinidad instituted an action to obtain a temporary restraining order in the United States District Court for the District of Columbia on the ground that Arbitrator Usery did not have jurisdiction over all the parties necessary to resolve MEBA's grievance. Trinidad asked the court to enjoin the November 9 arbitration hearing so that a decision on the issues raised by MEBA could be rendered by an alternative forum, *i.e.*, a multipartite arbitration, or the court itself, in which all the parties could appear and be bound. On November 3, 1983, at the behest of the court, Trinidad requested a continuance of the arbitration until after November 14, 1983, the date on which the court scheduled the preliminary injunction hearing. Despite the fact that the request for continuance was made at the court's urging, Arbitrator Usery refused to grant the continuance.

The district court granted Trinidad's request for a temporary restraining order on November 4. The U.S. Court of Appeals for the D.C. Circuit vacated this order on November 8—hours before the arbitration hearing scheduled for the next day. *See In re District No. 1—Pacific Coast District, Marine Engineers' Beneficial Ass'n*, 723 F.2d 70 (D.C. Cir. 1983). The district court then

---

[5] In an October 31, 1983 telegram, Trinidad asked CTOA whether it "would participate in [the] November 9 hearing and agree to be bound by [the] Usery award." CTOA responded that it was unwilling to be bound by an arbitrator selected by a company with which it has no bargaining relationship and a rival union which was seeking to represent its workers.

ordered the parties to attend a status conference on November 9, at the same time the arbitration hearing was scheduled. Because of these developments, Trinidad renewed its request for a continuance, but the arbitrator again denied the request. As a result, Trinidad was unable to present any evidence on the merits of the grievance at the November 9 arbitration hearing.

On December 23, 1983, Arbitrator Usery issued an opinion and award sustaining MEBA's grievance. On the merits, the arbitrator ruled that Crest and Trinidad are "alter egos" and a "single, common employer," and that the licensed marine engineers of Crest are "accreted to Trinidad's unit of engineers". The Arbitrator ordered Trinidad, *inter alia*, to:

> 1. Immediately cause Apex Oil, Crest and Clayton to execute the [Trinidad-MEBA] Agreement.
>
> 2. Immediately apply the terms of the [Trinidad-MEBA] Agreement to all licensed marine engineers employed on all vessels owned or operated by Crest or Clayton.
>
> 3-4. Pay [wages and fringe benefit contributions for] a full complement of engineers . . . on all vessels owned or operated by Crest and/or Clayton from the time said vessels were acquired until such time as the licensed marine engineers employed thereon are covered by the [Trinidad-MEBA] Agreement.[6]

---

[6] The December 23, 1983 award did not specify the dollar amount that Trinidad was to pay as damages. A separate arbitration hearing was held on May 20, 1985 to determine the specific amount of damages. Although no evidence was introduced at either hearing showing that any MEBA members had suffered a loss of pay or benefits as a result of Trinidad's alleged breach, Arbitrator Usery, in an award dated August 12, 1985, ordered Trinidad to pay approximately seven-and-a-half million dollars. Trinidad filed a petition in the Supreme Court of New York, County of New York, Special Term, to vacate the August 12, 1985 award, but that petition was denied in March 1986. Thereafter, Trinidad filed an appeal with the Appellate Division, First Judicial Department, which appeal is presently pending.

On December 23, 1983, the same day the arbitrator's award was rendered, MEBA filed in the Supreme Court of New York, County of New York, Special Term, a petition under Section 301 of the LMRA to confirm the arbitration award. On January 16, 1984, Trinidad filed an answer in which it raised several affirmative defenses, and on March 22, 1984, Trinidad filed a cross motion to vacate or set aside the award. Among the arguments raised by Trinidad in its answer and cross motion was the contention that the arbitrator had exceeded his authority and issued an award contrary to public policy and federal labor law in that his award applied to nonsignatories to the agreement.

On November 14, 1984, the New York Supreme Court, Special Term, per Judge Maresca, issued an opinion granting MEBA's petition to confirm the award and denying Trinidad's cross-motion to vacate that award. The court's opinion consists of a few short, conclusory paragraphs. On the issue of whether there should have been a multipartite arbitration, the court simply expressed its view that it is not "in the discretion of the court to determine what type of arbitration or other forum would have been best in this matter" (App. B at 6a).

In Trinidad's appeal to the Appellate Division, First Judicial Department, one of the principal questions presented, and decided, was "[w]hether the arbitrator's order directing Trinidad to apply its collective bargaining agreement with MEBA to two nonsignatory employers, one of which is bound by a separate, valid collective bargaining agreement, who did not participate in the arbitration hearing was in excess of the arbitrator's authority and contrary to public policy and applicable law" (Brief for Respondent-Appellant Trinidad Corporation, at 1). On January 21, 1986, the Appellate Division ruled against Trinidad on this issue, and affirmed the decision of Special Term (App. A).

Thereafter, on July 8, 1986, the New York Court of Appeals denied Trinidad's motion for leave to appeal to that court (App. D). In its motion for leave to appeal, Trinidad had repeated its contention that the award was improper under federal labor law since no multipartite arbitration was conducted.

Meanwhile, in a parallel proceeding initiated by Crest, the General Counsel of the NLRB has issued a complaint against MEBA which alleges that MEBA's efforts to compel arbitration and to enforce the award in the New York state courts violate the NLRA. Specifically, the NLRB has charged MEBA with violating Sections 8(b)(1)(A) and (B) and 8(b)(2), 29 U.S.C. § 158(b)(1)(A) and (B) and (b)(2), because by compelling arbitration and enforcing the arbitration award in the New York state courts it has unlawfully sought to extend the Trinidad-MEBA contract to Crest, an entirely separate employer, and Crest's licensed marine engineers, who are already represented by the CTOA (App. E at 14a-15a).[7]

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD RESOLVE THE CONFLICT AMONG THE FEDERAL COURTS OF APPEALS REGARDING THE APPROPRIATENESS OF MULTIPARTITE ARBITRATION

In upholding the arbitrator's award, which was rendered after a bilateral arbitration without the participation of Crest and CTOA, the New York Supreme Court, Special Term, found that it is not "in the discretion of the court to determine what type of arbitration or other

---

[7] An administrative law judge has issued a preliminary decision dismissing the complaint. *District No. 1, Pacific Coast District, Marine Engineers' Beneficial Ass'n (Crest Tankers, Inc.)*, NLRB Case No. 14-CB-6124 (Sept. 24, 1986). This is not a final decision as of the filing of this petition, as the General Counsel still has the opportunity to appeal to the NLRB.

forum would have been best in this matter" (App. B at 6a). In so ruling, the court mistook this case for the usual labor dispute involving two parties to one collective bargaining agreement, instead of a dispute which involves two valid collective bargaining agreements and the claims of at least four parties.[8] Where such multiparty jurisdictional disputes exist, this Court has indicated its approval of court-ordered multipartite arbitration; however, the lower federal courts have not consistently compelled multipartite arbitration in this situation.

A. The Decision Of This Court In *Union Pacific Railroad* Supports Multipartite Arbitration

Although this Court has not directly addressed the issue of the propriety of multipartite arbitration under the NLRA, it has indicated its approval of the process in disputes under the Railway Labor Act, 45 U.S.C. § 151 *et seq.*[9] The Court's approval came in *Transportation-Communication Employees Union v. Union Pacific Railroad*, 385 U.S. 157 (1966), in which this Court concluded that bilateral arbitration is not the proper means for resolving multi-party work jurisdiction disputes and that reliance on bilateral arbitration in such circumstances runs counter to federal labor policy. In *Union Pacific*, the Court ordered the Railroad Adjustment Board ("RAB") to settle a work assignment dispute between competing unions in one proceeding. The Court concluded that the RAB's approach of conducting separate bilateral proceedings in which only one union at a time participated was imprudent since "first ordering the railroad to pay one union and then later, in a separate

---

[8] It involves five parties if the interests of Clayton Tankers, which has no shipboard employees, are taken into account.

[9] This Court has relied on cases decided under the Railway Labor Act in resolving disputes arising under the NLRA. *See, e.g., Carey v. Westinghouse Electric Corp.*, 375 U.S. 261, 265 (1964).

proceeding, ordering it to pay the other union," would place the employer in a "merry-go-round situation," one hardly consistent with the policy of settling labor disputes in a prompt and orderly fashion. *Id.* at 162. Accordingly, the Court remanded the dispute to the RAB so that it could consider together the claims of both unions, and thereby resolve the entire dispute. Thus, this Court recognized the benefit of having all parties present at an arbitration.

The Court's decision in *Union Pacific* implicitly modified the Court's earlier decision in *Carey v. Westinghouse Electric Corp.*, 375 U.S. 261 (1964). In *Carey*, a local of the International Union of Electrical Workers ("IUE") filed a grievance alleging that certain employees represented by another union were performing work which was to be exclusively performed by the IUE. The employer refused to arbitrate with the IUE on the ground that the dispute involved a matter for the NLRB. The Court held that the parties should proceed with the grievance procedure. *Id.* at 266. It noted that if the dispute were "jurisdictional", the NLRB would only become involved in the event either one of the unions used coercion to obtain the work in question, and if the dispute were "representational", NLRB involvment would await the filing of an unfair labor practice charge or a unit clarification petition. *Id.* at 263-64, 266-67. Since both the fact and nature of NLRB involvement remained speculative, the Court saw no reason to bar the bilateral arbitration proceeding. Moreover, the Court thought that "resort to arbitration may have a . . . curative effect even though one union is not a party." *Id.* at 272.

Read in light of *Union Pacific*, *Carey* stands for the limited proposition that the possibility that a work assignment dispute may eventually involve the NLRB should not by itself prevent a bilateral arbitration from taking place; it does not address the wisdom of ordering

a multipartite arbitration as a substitute for separate bilateral proceedings.[10]

It is clear from *Union Pacific* that multipartite arbitration is the proper mechanism for the resolution of disputes among three or more parties. The lower courts, however, have ruled inconsistently on this issue as some have relied on *Union Pacific* and others on an improperly broad interpretation of *Carey*. Therefore, the instant petition should be granted to clarify any misconceptions that the lower courts have with respect to this Court's position on the issue of multipartite arbitration.

B. The Federal Courts Are In Conflict As To The Appropriateness of Multipartite Arbitration

Several courts of appeals, following *Union Pacific*, have approved of multipartite proceedings to resolve disputes involving more than two parties. The Second Circuit, in *CBS v. American Recording and Broadcasting Ass'n*, 414 F.2d 1326 (2d Cir. 1969), *aff'g* 293 F. Supp. 1400 (S.D.N.Y. 1968), recognized that federal labor law policy can only be satisfied if all parties are joined in one forum which can consider and dispose of all claims. Specifically, the court ruled that multi-party work jurisdiction disputes must, and indeed can only be, resolved by bringing all parties to the dispute before a forum that can consider both collective bargaining agreements and then determine which of the competing unions is entitled to the disputed work. *Id.* at 1329. This method of dispute resolution is required, as the district court noted, because it is "[r]ational, meaningful and peaceful" as well as "practicable, economical and convenient." 293 F. Supp. at 1402-03. Moreover, multipartite arbitration is "sound because it not only avoids duplication

---

[10] Indeed, the Court specifically noted that one of the problems with a bilateral arbitration is that "unless the other union intervenes, an adjudication of the arbiter might not put an end to the dispute." *Id.* at 265.

of effort but the possibility of conflicting awards." *Id.* at 1403. *See also Bell Aerospace Co. v. Local 516, UAW*, 500 F.2d 921, 923 (2d Cir. 1974) (approving *CBS*).

Following the Second Circuit, the Third Circuit, in *Window Glass Cutters League v. American St. Gobain Corp.*, 428 F.2d 353, 355 (3d Cir. 1970), noted that a district court clearly has authority to order multipartite arbitration where two unions dispute the work assignments of one employer. Similarly, the Tenth Circuit, in *Local 850, International Ass'n of Machinists v. T.I.M.E.-DC Inc.*, 705 F.2d 1275 (10th Cir. 1983), upheld the district court's order directing the employer and two unions to submit their dispute to tripartite arbitration where the previous bilateral arbitrations had resulted in inconsistent awards.[11]

In addition to the Second, Third and Tenth Circuits, numerous district courts have recognized the need for joinder of all parties in multi-party jurisdictional disputes. Specifically, in *Baltimore Typographical Union No. 12 v. A.S. Abell Co.*, 441 F. Supp. 596, 602 (D. Md. 1977), *aff'd mem.*, 588 F.2d 1347 (4th Cir. 1979), the court ordered tripartite arbitration where two unions asserted jurisdiction, pursuant to two separate collective bargaining agreements, over the same work. Similarly, the court ordered tripartite arbitration in *Local No. 552, United Brick and Clay Workers v. Hydraulic Press Brick Co.*, 317 F. Supp. 818, 827-28 (E.D. Mo. 1974), in which one union asserted claims against two companies. Further, in *United Steel Workers v. Crane Co.*, 456 F. Supp. 385 (W.D. Pa. 1978), the court directed a union and two employers to resolve their dispute in tripartite arbitra-

[11] The Seventh Circuit has also indicated its general approval of the multipartite process. *Local 416, Sheet Metal Workers International Ass'n v. Helgesteel Corp.*, 507 F.2d 1053 (7th Cir. 1974) (court ordered tripartite arbitration). *But see Laborers' International Union v. W.W. Bennett Construction Co.*, 686 F.2d 1267, 1275 (7th Cir. 1982) (multipartite arbitration not appropriate where subcontractor not bound to arbitrate).

tion. *See also Local 201, United Association of Journeymen v. Shaker, Travis & Quinn, Inc.*, 555 F. Supp. 314, 318-19 (S.D.N.Y.), *vacated on other grounds*, 709 F.2d 178 (2d Cir. 1983) (tripartite arbitration ordered for two unions and one employer).

In contrast to the Second, Third and Tenth Circuits, as well as the district courts cited above, the D.C. Circuit has expressly refused to order multipartite arbitration. *In re District No. 1—Pacific Coast District, Marine Engineers' Beneficial Ass'n*, 723 F.2d 70 (D.C. Cir. 1983). As set forth in the Statement of the Case, *supra*, the D.C. Circuit vacated the district court's order enjoining MEBA from pursuing bilateral arbitration against Trinidad. Trinidad had requested that MEBA be required to arbitrate with Crest and the CTOA, as well as Trinidad. Relying on an excessively broad interpretation of *Carey*, the court of appeals held that it was an abuse of discretion for the district court to enjoin the arbitration because of the risk that the award might affect nonsignatories. *Id.* at 79. The court of appeals reasoned that the right of Trinidad to challenge enforcement of the award obviated the need for multipartite arbitration. *Id.*

Several district courts have similarly refused to order multipartite arbitration. In *Nashua Typographical Union v. Telegraph Publishing Co.*, 365 F. Supp. 262, 264 (D.N.H. 1973), the court, citing *Carey*, allowed a bilateral arbitration to go forward even though the employer asserted that two unions were involved in the work dispute. In *Local 189, Service Employees Union v. Scot Lad Foods, Inc.*, 513 F. Supp. 839 (N.D. Ill. 1981), the court refused to order tripartite arbitration as the court believed there was only a slight possibility the employer would be subject to inconsistent results.[12]

---

[12] *See also District No. 1—Pacific Coast District, Marine Engineers' Beneficial Ass'n v. Trinidad Corp.*, 583 F. Supp. 262 (S.D.N.Y. 1984) (dicta) (multipartite arbitration not appropriate to resolve dispute between union and multiple employers).

Although the Appellate Division's summary affirmance and the abbreviated opinion of Special Term in this case make it difficult to determine precisely why the lower courts concluded that multipartite arbitration was not the proper procedure to follow in the instant case, it is a fair assumption that they did not consider it to be a procedure that a court could order. Special Term flatly stated that it is not "in the discretion of the court to determine what type of arbitration or other forum would have been best in this matter" (App. B at 6a).

The existence of these conflicting decisions raises substantial questions about the status of federal law on this issue. As the law now stands, parties in the Second, Third and Tenth Circuits could proceed to multipartite arbitration when more than two parties were involved in the dispute, whereas parties in the D.C. Circuit would proceed to bilateral arbitration. State courts would presumably be free to follow whatever line of authority they concluded was most persuasive.

As this Court recently emphasized in *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 105 S. Ct. 1904, 1911 (1985), "questions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law." Yet, because of the conflicting decisions of the federal courts, employers doing business in some geographical areas can expect different arbitration procedures than employers in other areas.

The interrelationship between arbitration over work assignment disputes and employers' and employees' rights under the NLRA underscores the importance of resolving this question. As the complaint issued against MEBA by the NLRB's General Counsel demonstrates (App. E), nonsignatories which are affected by arbitration awards rendered pursuant to procedures in which they have not participated will seek to protect themselves by involving the NLRB and its processes. Although bilateral arbitra-

tion may in some circumstances have a "curative effect", *Carey, supra*, 375 U.S. at 272, multipartite arbitration appears to be the best vehicle for avoiding a "merry-go-round situation," *Union Pacific, supra*, 385 U.S. at 162, in which employers and employees seek relief in protracted proceedings before one forum and then another.[13]

Multipartite arbitration should have been the procedure followed in the instant case, and the arbitrator's award is unenforceable because this procedure was not followed. However, the lower court's confirmation of the award is in accord with the views of some federal courts, albeit the views of a minority. Trinidad respectfully submits that this Court should grant the instant petition to resolve this conflict among the federal courts.

CONCLUSION

For all the foregoing reasons, a writ of certiorari should issue to review the judgment of the Appellate Division, Supreme Court of the State of New York, First Judicial Department.

Respectfully submitted,

PETER CHATILOVICZ
RONALD A. LINDSAY
Counsel of Record
ALISA M. AUSTIN
SEYFARTH, SHAW, FAIRWEATHER & GERALDSON
Fifth Floor
1111 19th Street, N.W.
Washington, D.C. 20036
(202) 463-2400
Attorneys for Petitioner

DATED: October 6, 1986

---

[13] A multipartite arbitration would have resolved this dispute in 1983. It took three years of vigorously contested litigation for the bilateral arbitration award to achieve final confirmation in the New York state courts; the parallel NLRB proceedings have not yet reached a final conclusion.

APPENDICES

APPENDIX A

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on January 21, 1986

Present—Hon. Theodore H. Kupferman, Justice Presiding
Joseph P. Sullivan
David Ross
John Carro
Sidney H. Asch, Justices.

25601-02

DISTRICT NO. 1—PACIFIC COAST DISTRICT,
MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO,
Petitioner-Respondent,

—against—

TRINIDAD CORPORATION,
Respondent-Appellant.

[Filed Jan. 21, 1986]

Appeals having been taken to this Court by the respondent-appellant from an order of the Supreme Court, New York County (Orest Maresca, J.), entered on November 23, 1984, and from a judgment of said court, entered thereon on November 23, 1984,

And said appeals having been argued by Peter Chatilovicz of counsel for appellant, and by Angelo V. Arcadipane of counsel for petitioner-respondent; and due deliberation having been had thereon,

It is unanimously ordered that the order and the judgment so appealed from be and the same hereby are affirmed. Petitioner-respondent shall recover of appellant one bill of $75 costs and disbursements of these appeals.

ENTER:

/s/ Harold J. Reynolds
Clerk

APPENDIX B

SUPREME COURT
NEW YORK COUNTY
SPECIAL TERM—PART 1

Index No. 92884 83
#284 of 4/30/84

DISTRICT NO. 1—PACIFIC COAST DISTRICT,
MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO,
Petitioner,

—against—

TRINIDAD CORPORATION,
Respondent.

[Filed Nov. 15, 1984]

MARESCA, J.:

Petitioner seeks judgment pursuant to CPLR 7510 and section 301 of the Labor-Management Relations Act of 1947 (29 U.S.C. Sec. 185) confirming an arbitration award dated December 23, 1983. Respondent cross-moves to set aside the award.

Petitioner Marine Engineers' Beneficial Association ("MENA") [sic] is a labor organization which represents the licensed marine engineers employed on U.S. Flag Vessels owned and operated by respondent Trinidad Corporation.

MEBA and Trinidad are parties to a collective bargaining agreement executed in 1981 which covers the engineers. Two affiliated companies Crest Tankers, Inc. ("Crest") and Clayton Tankers, Inc. ("Clayton") were formed by Trinidad's parent corporation after Trinidad entered into the agreement with the Union. Crest and Clayton own and/or operate 8 vessels which are similar to and carry the same type of cargo as Trinidad's 17 owned or operated vessels.

The dispute between the parties arose as a result of Trinidad's refusal to bind Crest and Clayton to its agreement with the Union. The Union alleged that Trinidad's refusal was a breach of the agreement and initiated an arbitration to settle the dispute.

The arbitrator, W.J. Usery, Jr., determined first that he had jurisdiction under the terms of the collective bargaining agreement to decide the case and secondly that the business entities known as Crest Tankers, Inc. and Clayton Tankers, Inc. were covered under section 36 of the agreement.

Specifically, the arbitrator ruled that Crest, Clayton and Trinidad are "alter egos" and constitute a single common employer and therefore that the licensed marine engineers of Crest and Clayton are "accreted" to Trinidad's unit of engineers. Accordingly, the arbitrator ordered:

a) That Trinidad immediately cause Apex Oil (the parent corporaiton) [sic] Crest and Clayton to execute the agreement.

b) That Trinidad immediately apply the terms of the agreement to all licensed marine engineers employed on all vessels owned and operated by Crest or Clayton.

c) That Trinidad pay back wages and fringe benefit contributions for all licensed marine engineers employed on all vessels owned or operated by Crest and/or Clayton from the time said vessels were acquired until such time as the licensed marine engineers employed thereon are covered by the agreement.

Under well-established Federal Labor Law principles, unless Trinidad convincingly demonstrates that the arbitration decision does not "draw its essence" from the Trinidad-MEBA collective bargaining agreement, the court "is bound to enforce the award and is not entitled

to review the merits of the contract dispute". *W.R. Grace and Co. v. Local Union 759*, 461 U.S. 757, 103 S. Ct. 2177 (1983).

Similarly, under New York law, Trinidad must show by clear and convincing proof that the arbitration award should be vacated on one of the statutory grounds set forth in CPLR 7511(b). See, e.g., *Civil Service Employees Assn. v. Lombard*, 50 AD2d 708, 709 aff'd 41 NY2d 915.

Under section 2 of the collective bargaining agreement the arbitrator is empowered and obligated to interpret the agreement. That authority extends to interpretation of provisions within the agreement which specify the extent of coverage of the agreement. Section 36 of the agreement states:

> (a) This Agreement covers all licensed marine engineers employed on U.S. Flag ocean-going tanker vessels of whatever type, owned or operated (both at the present or at any time during the life of this Agreement) by the Company, *or its subsidiary or affiliate* . . . .
>
> (b) The term "subsidiary" or "affiliate" shall be deemed to include any business entity whether corporate, partnership, trust or individual which is effectively controlled by or effectively controls the Company either directly or indirectly. (emphasis added).

Based on the evidence submitted which detailed the relationship among the various entities, the arbitrator determined that Apex, Crest and Clayton were commonly controlled by the same entities and individuals who controlled Trinidad and therefore were subsidiaries and affiliates within the meaning of Article 36. This was within the meaning of Article 36. This was within his province and it is not up to the court to decide whether it would have done the same.

Nor is it in the discretion of the court to determine what type of arbitration or other forum would have been best in this matter. The arbitrator clearly had jurisdiction and he exercised it as he saw fit.

Under the circumstances, it cannot be said that the arbitrator exceeded his powers, i.e., that his award exceeded the scope of the submission and was so "totally irrational" that he effectively rewrote the agreement. See, e.g., *Local Division 1179 v. Green Bus Lines, Inc.*, 50 NY2d 1007.

Nor does it appear that the arbitrator's refusal to grant Trinidad's request for a continuance of the November 9, 1983 arbitration hearing was misconduct. Trinidad had been notified in October of the arbitration and had already received one continuance.

The arbitration award is not contrary to federal law as an unfair labor practice. First, as conceded by the parties, these engineers are supervisors and are not covered or protected by the provisions of the National Labor Relations Act. Secondly, although the engineers employed on the vessels owned and/or operated by Crest and Clayton have not expressed their desires to be represented by the Union, Crest and Clayton as "alter egos" of Trinidad are bound by Trinidad's agreement with the Union.

Accordingly, the petition to affirm the arbitrator's award is granted. The cross-motion is denied. This shall constitute the decision and judgment of the court.

Dated: November 14, 1984

/s/ Orest Maresca
J.S.C.

APPENDIX C

SUPREME COURT OF THE
STATE OF NEW YORK
SPECIAL TERM PART I
NEW YORK COUNTY
at the Courthouse thereof, 60 Centre Street,
New York, New York, 10007

Present: HON. OREST V. MARESCA
Justice.

DISTRICT NO. 1—PACIFIC COAST DISTRICT,
MARINE ENGINEERS' BENEFICIAL ASS'N

—against—

TRINIDAD CORPORATION

[Filed Nov. 23, 1984]

The following papers numbered 1 to 15 read on this motion, submitted.

No. 284 on Calendar of 4-30-84	PAPERS NUMBERED
Notice of Motion—	
and Affidavits Annexed	1- 3
Answering Affidavit	4-10
Replying Affidavit	11-13
—— Affidavit	
—— Affidavit	
Pleadings—Exhibit	
Stipulation—	
Referee's Report—	
Minutes	
Filed Papers notice of restoration	14
letter	15

Upon the foregoing papers this motion is decided in accordance with memorandum decision.

Dated November 14, 1984

Briefs: Plaintiff's — Defendant's — Petitioner's ✓ Respondent's ✓

Relator's —

/s/ Orest Maresca
J.S.C.

County Clerk's No. 92884, 1983
Spec I Liber 2 Line 9, 1984

APPENDIX D

STATE OF NEW YORK
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the eighth day of July A.D. 1986

Present, HON. SOL WACHTLER, *Chief Judge, presiding.*

1-10 Mo. No. 496

DISTRICT NO. 1—PACIFIC COAST DISTRICT,
MARINE ENGINEERS' BENEFICIAL ASSOCIATION,
Respondent,

vs.

TRINIDAD CORPORATION,
Appellant.

A motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein and papers having been submitted thereon and due deliberation thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied with twenty dollars costs and necessary reproduction disbursements.

/s/ Donald M. Sheraw
DONALD M. SHERAW
Clerk of the Court

APPENDIX E

UNITED STATES OF AMERICA BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 14

Case 14-CB-6124

DISTRICT NO. 1—PACIFIC COAST DISTRICT,
MARINE ENGINEERS' BENEFICIAL ASSOCIATION, AFL-CIO

and

CREST TANKERS, INC.

COMPLAINT AND NOTICE OF HEARING

It having been charged by Crest Tankers, Inc., herein sometimes called Charging Party, that District No. 1—Pacific Coast District Marine Engineers' Beneficial Association, AFL-CIO, herein sometimes called Respondent, has engaged in and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for Region 14, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations—Series 8, as amended, hereby issues this complaint and notice of hearing and alleges as follows:

1

A. The original charge in this proceeding was filed by Charging Party on November 17, 1983, and served by

certified mail upon Respondent on or about the same date.

B. The first amended charge in this proceeding was filed by Charging Party on January 10, 1984, and served by certified mail upon Respondent on or about the same date.

2

A. Charging Party is, and has been at all times material herein, a corporation duly authorized to do business under the laws of the State of Missouri.

B. At all times material herein, Charging Party has maintained its principal office and place of business at 7930 Clayton Road in the County of St. Louis, and State of Missouri, herein called the Charging Party's St. Louis place of business. Charging Party is, and has been at all times material herein, engaged in the international transportation of petroleum products on the high seas.

C. During the year ending December 31, 1983, which period is representative of its operations during all times material herein, Charging Party, in the course and conduct of its business operations derived gross revenues in excess of $50,000 for transportation of petroleum products from the States of North Carolina and/or Louisiana directly to points located outside said states.

D. Charging Party is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

E. Trinidad Corporation, herein sometimes called Trinidad, is and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Delaware.

F. At all times material herein, Trinidad has maintained an office and place of business at 926 Public Ledger Building in the City of Philadelphia, and State of Pennsylvania, herein called Trinidad's Philadelphia

place of business. Trinidad maintains other places of business in the States of Missouri and California. Trinidad is, and has been at all times material herein, engaged in the international transportation of petroleum products on the high seas.

G. During the year ending December 31, 1983, which period is representative of its operations during all times material herein, Trinidad, in the course and conduct of its business operations derived gross revenues in excess of $50,000 for transportation of petroleum products from the States of Alaska and California directly to points located outside said states.

H. Trinidad is now and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3

A. Respondent is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

B. Crest Tankers Officers Association, herein called the Association, is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

4

At all times material herein, the following named persons occupied positions set opposite their respective names, and have been and are now agents of the Respondent, acting on its behalf, within the meaning of Section 2(13) of the Act.

J. M. Calhoon	—	President
Leon Shapiro	—	Secretary-Treasurer

5

The following employees of the Charging Party (hereinafter called the Crest Unit) constitute a unit appropri-

ate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All licensed officers, including engineer, deck and radio officers, employed on the United States flag ocean going vessels owned and operated by the Charging Party.

6

Since on or about October 29, 1982, and at all times material herein, the Association has been the lawfully designated exclusive collective-bargaining representative of the Crest Unit, and since on or about October 29, 1982, the Association has been recognized as such by the Charging Party. Such recognition has been embodied in a collective-bargaining agreement which is effective by its terms for the period of October 29, 1982 to October 29, 1985.

7

At all times since October 29, 1982, the Association, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative for the Crest Unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

8

At all times material herein, Respondent has been the collective-bargaining representative of the following persons employed by Trinidad (hereinafter called the Trinidad Unit):

> All licensed engineers employed on U.S. flag ocean going tankers owned by Trinidad.

9

At all times material herein, Respondent and Trinidad have been parties to successive collective-bargaining agreements covering the Trinidad Unit, the most recent

of which is effective by its terms for the period of June 16, 1981 to June 15, 1984.

10

At all times material herein, members of the Crest Unit have occupied the positions of chief engineer and first assistant engineer for the Charging Party, and have been supervisors within the meaning of Section 2(11) of the Act and/or representatives of the Charging Party for the purposes of collective bargaining or the adjustment of grievances.

11

The collective-bargaining agreement between Trinidad and Respondent referred to in paragraph 9, above, contains provisions requiring those persons covered by this agreement to become members of Respondent and maintain membership in good standing in Respondent during the term of the agreement.

12

A. On or about October 11, 1983, Respondent filed a grievance to compel Trinidad to force the Charging Party to apply Respondent's agreement with Trinidad, referred to in paragraph 9, above, to the Crest Unit.

B. On or about November 9, 1983, Respondent processed the grievance referred to in subparagraph 12A, above, to arbitration.

C. On or about December 23, 1983, Respondent filed a petition in the Supreme Court for the State of New York in New York County seeking to enforce an arbitration award compelling Trinidad to force the Charging Party to apply Respondent's agreement with Trinidad, referred to in paragraph 9, above, to the Crest Unit.

13

By the acts described above in paragraph 12, and by each of said acts, Respondent did restrain and coerce, and

is restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(b) (1) (A) and Section 2(6) and (7) of the Act.

14

By the acts and conduct described in paragraph 12, above, and by each of said acts, Respondent has restrained and coerced, and is restraining and coercing, an employer in the selection of its representatives for purposes of collective bargaining or adjustment of grievances, and Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(b) (1) (B) of the Act.

15

By the acts described above in paragraph 12, and by each of said acts, Respondent did attempt to cause and is attempting to cause an employer to discriminate against its employees in violation of Section 8(a) (3) of the Act, and thereby did engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(b) (2) and Section 2(6) and (7) of the Act.

16

By the acts and conduct described in paragraph 12, above, and by each of said acts, Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with an employer, and Respondent thereby has been engaging in unfair labor practices within the meaning of Section 8(b) (3) of the Act.

17

The acts of Respondent described in paragraph 12, above, occurring in connection with operations of Charging Party and Trinidad described in paragraph 2, above, have a close, intimate, and substantial relation to trade,

traffic, and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 8(b)(1)(A), (b)(1)(B), (b)(2), and (b)(3) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 23rd day of July 1984, at 9 a.m., or as soon thereafter as you may be heard, at Room 448, 210 Tucker Boulevard North, St. Louis, Missouri, a hearing will be conducted before a duly designated administrative law judge of the National Labor Relations Board on the allegations set forth in the above complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and 4 copies of an answer to said complaint within 10 days from the service thereof, and that unless it does so, all of the allegations in the complaint shall be deemed to be admitted to be true and may be found so by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

May 29, 1984

/s/ Joseph H. Solien
Regional Director
National Labor Relations Board
Region 14
Room 448
210 Tucker Blvd. North
St. Louis, MO 63101

APPENDIX F

The NLRA, §§ 7 and 8, 29 U.S.C. §§ 157 and 158, which provide in pertinent part:

§ 7

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . .

§ 8

> (a) It shall be an unfair labor practice for an employer—
>
> . . . .
>
> (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . .
>
> . . . .
>
> (b) It shall be an unfair labor practice for a labor organization or its agents—
>
> (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;
>
> (2) to cause or attempt to cause an employer to discriminate against an employee

> in violation of subsection (a) (3) of this section . . .

Section 301 of the LMRA, 29 U.S.C. § 185, which provides in pertinent part:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.